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IN THE

Supreme Court of the United States

October Term, 1954

No. 368

JOSEPH P. MARCELLE,

Petitioner,

v.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA,

Executors.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

LEON LONDON
LLOYD GEORGE SOLL

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Question Presented

The question here presented is whether the forgiveness of Section 421 of the Internal Revenue Code applies only to that portion of the serviceman's taxable year ending with the date of his death or whether the forgiveness is also applicable to income thereafter earned by his estate for the balance of the year during which he died.

Summary of Argument

The measure of tax forgiveness granted by Section 421 must be determined by reference to the period during which the income tax shall not apply. The language of the statute forgives the tax for "the taxable year in which falls the date of the [serviceman's] death." That language literally describes a twelve-month period. The purpose of Congress was to benefit the serviceman's estate. The decedent himself had already paid the "full measure of devotion" to his Country. The construction urged by the Government would limit relief for the estate of this decedent to the first 7 days of the calendar year. The intention of Congress was to grant relief for the decedent's normal taxable year (the calendar year 1945).

The Government urges that the words "taxable year" mean the fractional part of the year ending with the date of the serviceman's death. The Government relies on a definition of "taxable year" used in connection with the filing of income tax returns. This technical argument should be rejected on the grounds (1) that Congress could not have intended to incorporate a procedural definition of "taxable year" in a provision which forgives the tax and eliminates all need of collection procedures and (2) that Congress has, in all non-procedural situations, used the expression "taxable *period*" where it intended substantive tax consequences applying to fractional parts of a year. Indeed, if the Government is correct (and this, of course, is not conceded) in its contention that the words "taxable year" describes the fractional part of a year ending on the date of death, then the decedent's income tax for the period January 1, 1945 to January 7, 1945 is forgiven by the language "prior taxable years (ending on or after

December 7, 1941)," and the estate's income tax for the period January 7, 1945 to December 31, 1945 is forgiven by the words "the taxable year in which falls the date of his death." This result is identical to that achieved by the lower courts' non-technical interpretation of the statute.

Finally, the Government's emphasis on the use of the word "individual" in the statute is completely unwarranted. The word appears in a lengthy clause describing the event and the circumstances upon which the forgiveness depends. As such, it provides no measure of the tax relief intended by Congress. Here again, the Government's technical argument ignores the basic fact that it is the *estate* (the collective word for the serviceman's wife, children, parents, next-of-kin) which is the intended beneficiary of the forgiveness. Indeed, even at the technical level of the Government's argument, the income tax, by the very operation of Section 161 of the Internal Revenue Code, applies to both estates and individuals. The single case relied on by the Government is readily distinguishable from the case at bar.

ARGUMENT

Section 421 of the Internal Revenue Code of 1939 requires that the estate of this deceased serviceman be relieved from income tax for the full year during which he dies.

Section 421 of the Internal Revenue Code of 1939, as it read during the period involved in this case, provided:

> In the case of any individual who dies on or after December 7, 1941, while in active service as a mem-

ber of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces * * *.[1]

The opinions of the courts below and the opinion of Judge Davis in *Allen* v. *Bickerstaff*, 102 F. Supp. 840 (D. C. M. D. Ga. 1952) ably state most of the arguments bearing on the intention of Congress to relieve the estates of deceased servicemen from income tax for the entire year of death.

A. The purpose of Section 421 and the legislative history accord with the literal language of the statute granting tax relief to the estate of a deceased serviceman for the normal taxable year in which he dies.

The literal language of Section 421 requires that "the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of (the serviceman's) death." The Government concedes, perhaps in deference to the considered views of the courts below, that the phrase "the taxable year in which falls the date of his death" literally describes a period extending beyond the date of the serviceman's death. Obviously if the literal language of the statute conforms to the purpose of the tax relief accorded by Congress, then such relief enures to the

[1] The quoted Section 421, which applies here, was added to the Internal Revenue Code of 1939 by Section 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126.

benefit of the estate of the deceased serviceman for a period after the date of death of the serviceman. The courts below have concluded that both the language and the Congressional purpose completely coincide; that the estate of the deceased serviceman is relieved from income tax for that portion of the twelve month period remaining after the date of the serviceman's death.

The Government, notwithstanding the foregoing concession, contends that only the income of the deceased serviceman up to the date of his death is exempt and that income earned by his estate in the balance of the year of death is fully taxable to his estate. The Government advances arguments in support of that contention which are mainly technical ones. These arguments are based on the unwarranted assumption that this war-time, temporary legislation must fit four-square into the procedural framework of an Internal Revenue Code. These technical arguments will be considered by taxpayer hereinafter.

The basic issue here is the measure of tax relief *intended* by Congress. The Courts below concluded, and the taxpayer here urges, that the purpose of Section 421 was to grant tax relief to the *estate* of the deceased serviceman. The serviceman had paid "the full measure of devotion" to his Government on the date of his death. He could no longer be the intended beneficiary of Congressional bounty. The forgiveness was intended to benefit his survivors—his wife, his children, his parents, his next of kin—all of which the law collectively, albeit impersonally, describes as his estate. It is clear from the legislative history of this and related tax relief provisions that the forgiveness applies to the liability of his estate, the only possible object of the

forgiveness, and that the language of the statute necessarily applies to income earned during the full taxable year in which falls the date of the serviceman's death.

The *measure* of the tax relief intended by Congress must be found in the language dealing with the taxable years to which the tax shall not apply. For reasons which we shall more fully state hereinafter, the fact that Section 421 describes the type of decedent whose estate is granted a tax forgiveness (i.e. "any individual who dies on or after December 7, 1941, while in active service") is completely irrelevant in determining the measure of the tax relief. The tax forgiven is "the tax imposed by this chapter" (the income tax) which applies to *both* estates and individuals. (Section 161 of the Internal Revenue Code of 1939.) The measure of the tax relief must therefore turn on the phrase "the taxable year in which falls the date of his death." The description of the decedent provides absolutely no basis for limiting the forgiveness *to the portion of the taxable year ending with the date of the serviceman's death.* Indeed, as was pointed out by the court below (R. 16) the italicized language could readily have been used by Congress if it had intended to effect such a result. Congress simply did not employ those words in the statute itself. It is even more significant that, in all the Committee Reports dealing directly with Section 421, Congress never once indicated that its intention was to limit relief to *the portion* of the taxable year *ending with* the date of the serviceman's death.[2] Nor do any of the Committee Reports

[2] See H. Rep. No. 401, 78th Cong., 1st Sess., pp. 21 and 41 (1943 Cum. Bull. 1283 at pp. 1299 and 1314); Sen. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull. 1314, 1349); H. Conf. Rep. No. 510, 78th Cong., 1st Sess. pp. 68, 69 (1943 Cum. Bull. 1351 at pp. 1381-1382).

dealing with subsequent, but similar, legislation give the slightest indication of Congressional intent to so restrict the relief accorded to the serviceman's estate. On the contrary, the evidence of subsequent legislation and pertinent Committee Reports is all the other way.

In 1947, Section 421 was amended in details not pertinent to the issue herein.[3] However, the Committee Reports underlying the 1947 amendment described the import of the original Section 421 in the following language:

> "The purpose of the bill is to correct, retroactively, an inequitable situation which arises under the income-tax laws upon the death of a member of the armed forces. Under existing law if an individual, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, dies on or after December 7, 1941, and prior to the termination of the present war (as proclaimed by the President) *no income tax is imposed for the taxable year in which he dies.* * * *" (emphasis supplied) (H. Rep. No. 1106, 80th Cong., 1st Sess., pp. 1-2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1-2)

The italicized portion of the above-quoted language is ample evidence of Congressional intent to forgive the tax for the full year during which the serviceman dies. And this intention is further manifested in Committee Reports dealing with subsequent, but related, legislation.

Section 421 was temporary legislation, which was not intended to and never did become a permanent part of the

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[3] Section 421 was amended by Section 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778.

Internal Revenue Code. It expired by its own terms on December 31, 1947. After that date, other provisions were incorporated in the Internal Revenue Code of 1939 as Section 421, but those provisions were concerned with completely unrelated matters. However, in 1951, Congress enacted Section 154 of the Internal Revenue Code of 1939 designed to provide tax relief for the estates of servicemen killed in the Korean War.[4] The provisions of Section 154 were similar to those of Section 421 and also forgave the tax for "the taxable year in which falls the date of his death." The Senate report on the bill which added Section 154 used this language in describing the intended forgiveness:

> "*Your committee's bill provides for the forgiving of income tax in the year of death of such individuals* and in prior taxable years ending after the commencement of hostilities in Korea. Also, such individuals are relieved of any income taxes for any year unpaid at the date of their death." (emphasis supplied) (S. Rep. No. 781, 82nd Cong., 1st Sess., Sept. 18, 1951, 1951-2 Cum. Bull. 458, 495)

Just as in the case of Section 421, the 1951 legislation was also temporary in nature. It was to expire on January 1, 1954. In 1953, Congress amended Section 154 (the Korean war tax relief) to extend its benefits for an additional year.[5] The pertinent Report of the House Ways and Means Committee is further evidence of a Congres-

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[4] Section 154 of the Internal Revenue Code of 1939 was added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154).

[5] Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154).

sional purpose to forgive the tax for "the taxable year in which he dies." Thus, the Report states:

> "Section 154 of the code now provides that in the case of an individual who dies after June 24, 1950, and prior to January 1, 1954, while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under sec. 22(b) (13) of the Code) or as a result of wounds, disease, or injury incurred while so serving, (1) the income tax imposed by chapter 1 of the Code shall not apply with respect to the taxable year *in which he dies* or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950," * * * (emphasis supplied). (H. Rep. No. 894, 83rd Cong., 1st Sess., 1953-2 Cum. Bull. 508, 516)

The foregoing language of the Committee Report supports the conclusion of the courts below. The phrase "the taxable year in which falls the date of his death" completely negates any construction that the date of death itself was to delimit the period to which the forgiveness applies. As pointed out by the court below, "since §421 clearly does not equate the *beginning* date of forgiveness with commencement of a deceased soldier's service, it seems unlikely that such an equation was intended with respect to its *ending* date by death." Indeed, if Congress had intended to equate the tax relief to the period of military service, language was readily available for it to do so. Section 573 of the Soldiers' and Sailors' Civil Relief Act of 1940[6] required that, under certain circumstances, the collection

[6] C 888, 54 Stat. 1178 (50 U. S. C. A. App. §573).

of a serviceman's income tax "shall be deferred for a period extending not more than six months after the termination of his period of military service." There is not a scintilla of evidence in Section 421, Section 154 (Korean war forgiveness) or in the Committee Reports to indicate a legislative intent to limit the forgiveness "to the period of military service" or "to the portion of the taxable year ending with the date of the serviceman's death." On the contrary, the statutes and the Committee Reports all combine to accord relief from tax for the full year in which falls the date of death.

B. The phrase "the taxable year in which falls the date of his death" does not refer to the portion of the serviceman's taxable year ending with the date of his death.

1. ***The "taxable year" to which the statute refers should not be interpreted in the context of other provisions of the Internal Revenue Code related to the technical requirements of filing returns.***

It was clear to the courts below that the literal language of the statute and the non-technical presentations of the intended tax relief as contained in the Committee Reports were ample evidence of a Congressional purpose to preclude the imposition of an income tax for the full twelve month period in which falls the date of the serviceman's death.

The Government rejects the views of the courts below for the alleged reasons, asserted in its brief, that they do violence to the "well-worked technical meanings" of other provisions of the Code. And therein lies one of the fallacies of the Government's position. Section 421 was not a measure designed to control the tax incidence of some day-to-day business transactions where the legislation is drafted with

special attention to the pre-existing technical meaning of the words employed. Rather it was temporary, war-time legislation designed to benefit a small, but highly deserving segment of the population, the next of kin of a deceased serviceman. Without recourse to authority (and none seems needed) common sense would seem to reject the Government's effort to glean the Congressional purpose underlying Section 421 by reference to pre-existing "technical meanings" of statutory clauses. Such an approach is completely arbitrary and totally unrevealing of the intention of the legislators. Relying on these "technical meanings," the Government is seeking to restrict the modest award which a grateful Congress bestowed upon the survivors of a deceased serviceman, all of which had given to their country in a measure beyond the capacity of Congress to repay.

The Government relies on a definition of the words "taxable year" as contained in Section 47(g) and 48 of the Internal Revenue Code of 1939. These sections deal with the requirements of filing an income tax return. They provide that an income tax return "shall be made for the fractional part of the year during which the taxpayer was in existence" and that where such a return is made "taxable year" means such fractional part of the year. But it is inconceivable that Congress could have intended to import the definitions of Section 47(g) and 48 into the language of Section 421 for at least two reasons.

Firstly, Congress intended to grant broad *relief* from tax and did not intend to gear that relief to administrative provisions dealing with the *collection* of the tax. It seems most unlikely that Congress could have intended to incor-

porate a definition of "taxable year" applicable to requirements of filing returns in a provision which, by its very purpose, dispenses with the need of filing a return.

Secondly, as the Government concedes in its brief (pp. 21, 22), in all matters of substance Congress has always used the expression "the taxable *period* in which falls the date of death" where it sought to limit substantive *tax consequences* to the fractional part of the year prior to decedent's death. It did not rely on a pre-existing definition of "taxable year" which relates to the procedural requirements of filing a return. Thus, Sections 42(a), 43, and 126 (and the language quoted therefrom by the Government on pages 21 and 22 of its brief) are all authority for the taxpayer's argument that if Congress had intended to limit relief to a fractional part of the decedent's taxable year then "well-worked technical" language was readily available for it to do so. In those substantive sections, Congressional language and intention coincide to describe a "taxable *period*" which is less than a year. It is illogical to urge that Congress intended a technical interpretation of Section 421 and to contend, at the same time, that Congress would have used the expression "taxable year" if it had desired to limit tax relief to the "taxable period" ending with decedent's death.

2. *Even if the taxpayer concedes that the expression "taxable year" may describe a period of less than twelve months, the relief afforded by Section 421 is not restricted to the portion of the taxable year ending with the date of the serviceman's death.*

It is obvious from the tenor of the Government's brief, that it would have this Court re-mold Section 421 to effect a symmetry which the Government apparently believes

would serve the end of procedural convenience. Thus, it adopts the aforesaid technical interpretation of the words "taxable year" and it alleges that the conclusion of the courts below will present insuperable problems of administration. At page 20 of its brief, it is stated:

> "On the other hand, the alternative adopted by the court below not only adds immediately to what Congress wrote, but raises unanswered questions which may require still further alteration. To illustrate, the court concludes that the estate must be exempted from the income tax for the remainder of the calendar year which would have been part of the deceased serviceman's 'taxable year' had he lived. But not only is this period not the taxable year of the decedent; it may not be the taxable year of the estate either. As we have noted, the estate may return its taxes on the basis of a fiscal year. If so, is the estate's income exempt only until the end of the calendar year, though this does not cover a 'taxable year' of the estate at all? Or is it exempt for its full fiscal year, though this extends beyond what would have been the decedent's taxable year? The statute, referring only to the 'taxable year,' affords no answer to these questions."

It is extremely doubtful whether it is the function of the courts to restrict the generosity of Congress merely because it serves the end of alleged procedural convenience. Nor has the Government satisfied the courts below that their conclusion will impose any real administrative inconvenience if income is exempted for the full normal taxable year of the deceased serviceman. Furthermore, as the Government concedes, the so-called "unanswered questions", if they exist at all, could be (or perhaps should be) answered by further legislation.

Be that as it may, the Government has absolutely failed to demonstrate that Section 421 does not by its own terms contain all the answers to the questions which it puts to this Court. To demonstrate their failure, we will assume, without conceding, that the Government is justified in placing reliance on Section 48 (defining "taxable year" for the purpose of filing returns). Let us further assume, as Appellant's Brief, p. 19 does, that there are two so-called "taxable years"; the decedent's taxable period, "measured by the portion of the calendar year ending with his death", and his estate's taxable period, "*beginning with the date of his death* and extending to either (1) the end of the calendar year or (2) the end of any month other than December if the estate is administered on a fiscal year basis."(Quotations from Appellant's Brief, p. 19.) Let us now assume that a calendar year serviceman was killed at Pearl Harbor on December 7, 1941. His "taxable year", on the foregoing assumption, is January 1, 1941 to December 7, 1941. Let us further assume that his estate adopts a fiscal year ending June 30th. Its first so-called "taxable year" then is for the period December 7, 1941 to June 30, 1942. With these assumed facts, and continuing the assumption of the propriety of the Government's definition of the words "taxable year", let us return to the language of Section 421, which provides that where a serviceman dies on or after December 7, 1941:

> "(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (*ending on* or after *December 7, 1941*) during any part of which he was a member of such forces * * *." (emphasis supplied)

It is obvious from the foregoing statute that the tax for the individual's taxable period (assumed to be January 1, 1941 to December 7, 1941) is abated by the language "with respect to any *prior* taxable years (*ending on* * * * December 7, 1941)". Indeed, that language *must* relate to the serviceman's prior-to-death period because, under the Government's theory, a "taxable year" could only end "on * * * December 7, 1941" if the serviceman died on that date. Thus, "the taxable year *in which falls* the date of his death" must necessarily relate to a period other than the prior-to-death period. It must refer to the estate's first so-called "taxable year", the period December 7, 1941 to June 30, 1942. That conclusion is also dictated by the fact that the statute speaks of the period January 1, 1941 to December 7, 1941 as being "*prior*" to "the taxable year in which falls the date of his death". In the foregoing hypothetical case, it is clear that, if the Government is correct as to its definition of "taxable year", the statute requires that the tax be forgiven for the period January 1, 1941 to December 7, 1941 *and* for the period December 7, 1941 to June 30, 1942. So also, in the case at bar, if the Government's definition of "taxable year" is controlling then the tax is forgiven for the period January 1, 1945 to January 7, 1945 *and* for the period January 7, 1945 to December 31, 1945. The latter result is identical to the result reached in the courts below where the clause "the taxable year in which falls the date of his death" was said to grant forgiveness for the decedent's normal taxable year, in this case the calendar year 1945.

Thus, whether this Court accepts or rejects the importation of a technical definition of the words "taxable year",

the result achieved by the courts below should be upheld. If this Court shares the Government's view that Section 421 should be interpreted with a view to procedural symmetry, then "the taxable year in which falls the date of his death" must, by the very terms of the statute, relate to the estate's so-called "taxable year" beginning on the date of the serviceman's death and ending on the last date of any month elected by his estate (the total period not to exceed twelve months).[7] Consequently, the Government's contention that the use of the word "individual" in Section 421 restricts the relief to the individual's prior-to-death period is necessarily wrong.

The technical emphasis on the use of the word "individual" in Section 421 is another example of the Government's refusal to acknowledge the basic fact that Congress was granting tax relief to an estate. Here again, the taxpayer contends that, either on the broad ground of Congressional purpose or at the technical level of the Government's contextual arguments, the Government's effort to restrict the tax relief to the "individual", and not to his estate, should fail.

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[7] It is noteworthy that Section 692 of the Internal Revenue Code of 1954, the present day counterpart of Section 421, is part of a subchapter dealing with the income tax liability of *estates*.

C. The use of the word "individual" does not restrict the forgiveness to that portion of the serviceman's taxable year ending with the date of his death.

Despite the obvious purpose of Congress to grant tax relief to the estate of a deceased serviceman, the Government insists that Section 421 cannot apply to the estate. The Government relies on the language of Section 421 which states at the outset: "In the case of any individual who dies * * * while in the active service". But their argument ignores the fact that the statute states that "the tax imposed by this chapter shall not apply"; that the latter language refers to the income tax levied by Chapter 1 of the Internal Revenue Code of 1939, and that Chapter 1 imposes the tax on *both* individuals and their estates. Section 161 of the Internal Revenue Code of 1939 provides:

> "(a) Application of Tax.—The taxes imposed by this chapter * * * upon individuals shall apply to the income of estates * * *"

Since the tax applies to *both* the individual and to his estate, the Government's argument is based on a completely unwarranted emphasis on the word "individual". The courts below concluded, and the taxpayer here contends, that the clause "In the case of any individual who dies on or after December 7, 1941 while in active service" was intended to describe the decedent whose estate is granted tax relief. As a result, neither the clause itself nor the word "individual" can give any indication of the measure of the intended tax exemption. Consequently, the courts below properly determined the measure of tax relief by reference to the period during which the tax was not to apply.

It is clear from the Committee Reports that the clause upon which the Government here relies was intended to be and is merely descriptive of the event upon which forgiveness depends. Thus, the Committee Reports relative to the 1947 amendment to Section 421 recites in part:

> "Your committee believes the income tax should not be imposed *in the event of the death* prior to January 1, 1948, of an individual while serving as a member of the armed forces * * *" (emphasis supplied) (H. Rep. No. 1006 80th Cong., 1st Sess., pp. 1-2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1-2).

So also the Committee Reports which accompanied Section 154 (Korean war forgiveness) stated:

> "Such Section 154 provides that, *where* any individual dies after June 24, 1951 and prior to January 1, 1954, while in the active service as a member of the Armed Forces of the United States, if his death occurred while serving in a combat zone * * * or at any place as a result of wounds, disease, or injury incurred while so serving, (1) the tax imposed by Chapter 1 of the Code will not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year which ended on or after the first day he was so serving in a combat zone * * *" (emphasis supplied) (S. Rep. No. 781 82nd Cong., 1st Sess., 1951-2 Cum. Bull. 458, 580; H. Rep. No. 1213 (Conference Report); 82nd Cong., 1st Sess. (1951-2 Cum. Bull. 622, 632)

Section 154 also began with the language "In the case of any individual who dies" and it is quite apparent from the foregoing Committee Report that the reference to "any

individual" was merely a necessary element in describing the event and the circumstances upon which the forgiveness depended. Indeed, if Congress had used the word "soldier" it would have failed to include sailors. If it had used "serviceman" it would have failed to include servicewomen. The simple fact is that any such relief provision, of necessity, must contain the word "individual."

The Government contends that the expression "in the case of an individual" are words-of-art in the tax law which, when employed by Congress, can only relate to the individual's income tax liability. The random instances cited by the Government (Brief p. 13) for that proposition are, on close inspection, convincing authority for the opposite conclusion. Thus, the provisions dealing with the deductibility of non-business expenses [Section 23 (a) (2)] or of certain losses [Section 23(e)] start with the preamble "in the case of an individual." But both of those sections apply to estates as well as individuals since Section 162 of the Code provides that the net income of an estate "shall be computed in the same manner and on the same basis as in the case of an individual."

Finally, the Government relies on *Lloyd* v. *Delaney*, 86 F. Supp. 1001 affirmed 181 F. 2d 941. The facts of that case presented an issue which is completely distinguishable from the issue involved herein. There a trust had been created by the will of the serviceman's father. Under the trust the serviceman was entitled to income up to $1200 a year. The balance of the income (which was quite substantial) was to be accumulated, was to be added to the principal, and was to be paid to someone else in the event of the serviceman's death. The trustees claimed exemption

for the entire income under Section 421. The District Court, concluding that Congress did not intend to exempt the trust, said in part:

> "This construction of the statute accords with its purpose of giving *a benefit to the estate of a deceased serviceman.* A construction which included fiduciary taxes would often work capriciously and extend benefits to persons who could not conceivably have been intended to be the object of the bounty of the Congress *or of the serviceman.* This can be seen by varying slightly the facts in the case at bar. Suppose the testator had named as the remainderman who would take in the event of Demarest Jr.'s premature death the testator's friend. Surely to grant a tax rebate to trustees for the benefit of such a friend not of the soldier, but of his father would serve no rational purpose that could have the recommended itself to Congress." (emphasis supplied)

As the court below observed (R. 18), the *Delaney* case is not at all apposite for reasons stated in its opinion.

In summary (1) the introductory language of Section 421 is descriptive of the decedent whose estate is entitled to the forgiveness; (2) the very purpose of the legislation was to benefit the estate of the deceased serviceman; (3) the use of the word "individual" can be of no significance since the income tax applies both to the "individual" and his "estate". Thus, it is submitted that the courts below properly concluded that the measure of tax relief must be determined with reference to the period relative to which the forgiveness applies. And, as we have already seen, the tax forgiven in the case at bar is for the calendar year 1945.

In its final point, the Government contends that "odd results" would follow if the courts below are upheld. In effect, the Government would deny the exemption to this taxpayer merely because, in its opinion, the Congress neglected to be generous to a few taxpayers who may be deserving of Congressional bounty. It would be a strange perversion of Congressional generosity if this estate were denied the exemption merely because a harrassed Congress forgot to be generous in the isolated situations posed in the Government's brief. It would be even stranger if this estate were denied exemption merely because the Government *assumes* that Congress forgot to be generous in these situations. It is hardly incumbent on the taxpayer to demonstrate the invalidity of the Government's assumption. If these other taxpayers should seek the benefits of Section 421, on kindred legislation, it is not unlikely that they will find a sympathetic court. A statute in which Congress has declared its purpose to reward the next-of-kin of a man who had given his life in the service of his country should be liberally construed. See *Clark* v. *Mechanic's American National Bank*, 282 Fed. 589. Be that as it may, Sergeant Lupia was killed in action on Leyte Island on January 7, 1945. His estate is expressly within the language and the intendment of the statute. No further justification is or should be required of this taxpayer.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

LEON LONDON
LLOYD GEORGE SOLL

March 1, 1955.